NGO Statement on Khudoni Hydropower Plant Project

October 15, 2013

We, the undersigned organizations, would like to express our position on some of the legal issues related to the Khudoni hydropower plant (Khudoni HPP) project as well as to raise our concerns over the recent developments.

On April 28, 2011 the Government of Georgia and the company Trans Electrica Limited (together with other parties) signed an agreement on the building, ownership and operation of Khudoni HPP. Under the agreement, the company undertook to abide by the requirements set under Georgian legislation, including to obtain permits and licenses necessary for the project implementation. Just through the permits and the licenses, the state (competent authorities – the Ministry of Economy and Sustainable Development; the Ministry of Environment and Natural Resources Protection) takes a final decision on granting consent for a project (under certain terms and conditions) or refusing to grant consent. This is the way through which the state can evaluate the advantages and disadvantages of such project, which "affects undefined circle of persons, is characterized with serious danger to human life or health, comprises significant state or social interests or is related to utilization of state resources" (Law on Licenses and Permits). The Khudoni HPP construction and operation project belongs just to this category.

To our deep regret, although the company has not yet applied to competent authorities for obtaining a permit and accordingly, these authorities have not yet made a decision on this project, the Georgian Prime Minister and the Energy Minister claim that the construction of Khudoni HPP is inevitable. It should be emphasized that according to legislation, it is not within the Energy Ministry's competence to make any decision on implementation or non-implementation of similar projects.

We believe that the above mentioned represents full neglecting of legal procedures on decision-making over the planned project, as well as exerting pressure on competent authorities and project-affected communities. In addition, it is a continuation of that practice typical for shameful and autocratic governance, which was applied in Georgia over the past 20 years – when the top leaders of the country were making decisions on implementation of various large-scale projects without any assessment of economic, social or environmental implications, whereas the competent authorities were simply required to fulfill these decisions, i.e. to issue the permits.

It is absolutely unacceptable that an unhidden campaign is underway against the persons and organizations critical to the Khudoni HPP project aimed at undermining their reputation; project opponents are portrayed as the agents of hostile countries and opponents of the country's development. Let us recollect similar statements made by the Energy Minister a couple of months ago that was condemned by joint NGO statement. To our deep regret, the same can be said about the Georgian Prime Minister's remarks made on September 16, when he directly called on the society not to listen to the opponents' statements ("It is impossible to hamper the implementation of the country's development strategy; do not believe the opponents, who only make a noise and cannot do anything more", he said). By this, Prime Minister demonstrated that any remark or opinion, which even slightly opposes the decision he already made – "Khudoni HPP must be built, like many other hydro power plants" – is a priori unacceptable for him.

At this point, the Khudoni HPP project undergoes the Environmental and Social Impact Assessment (ESIA) process carried out by the company. As a part of this process, public consultation meetings are being held. Unfortunately, this process is passing with violation of legal requirements: while the entire process should be carried out by the project developer, top officials from the Ministry of Energy actively interfere in the process of assessment/consultations, answer the questions of various stakeholders instead of the project developer during public consultation meetings or through media outlets, and make promises on behalf of the company. In addition, top officials from the Energy Ministry claim that the interests of the project-affected communities would be fully taken into consideration, but at the same time, they do not demonstrate even a minor readiness for it. The key demand of the local communities to discuss the project alternative, under which the villages will not be inundated, is categorically unacceptable for the ministry. The

representatives of the ministry (as well as the Georgian Prime Minister) try to assure the society without any substantiation that the implementation of the Khudoni HPP project in its proposed form is inevitable.

It is also alarming that the programme for involuntary resettlement has not been made public so far that represents a violation of the World Bank requirements (the agreement obliges the company to meet the WB standards) and international human rights law.

Finally, we would like to focus on yet another important issue related to the decision-making process on the Khudoni HPP project. The Georgian Prime Minister and top officials from the Energy Ministry claim that the Khudoni HPP project has strategic importance for the country. We consider this assertion unjustified for the following reasons:

- The country has neither energy development nor economic development strategies, which would have substantiated the state interest and strategic importance of the project development;
- The 2012 electoral program of the ruling Georgian Dream coalition highlighted that construction of large hydro power plants would be prohibited in Georgia. No significant changes have taken place either in Georgia's economy or its energy sector since 2012 which would have prompted Georgian Dream to reject its obligations undertaken on the basis of its own forecasts/analysis;
- The Georgian Government's program "For Strong, Democratic, United Georgia" notes that the country's economy should be based on a sustainable development model. The key priorities of the governmental programme are agriculture development and environmental protection, whereas the Khudoni HPP project is in direct contradiction to these priorities. Furthermore, construction of large hydro power plants has nothing to do with the government's commitments to the Georgian population;
- Neither the state, nor the investor has carried out the project's cost-benefit analysis so far.

Thus, there is no strategic document or other objective circumstances (unknown to the public) proving the state significance of the Khudoni HPP project. Therefore, we should suppose that there are subjective circumstances, which prompt top officials to forget about their commitments to the Georgians citizens undertaken about a year ago. With great probability, such circumstance can also represent a private interest given that for instance, the Energy Ministry's managing staff had some commercial interests in energy sector quite recently.

Based on the above mentioned, we demand:

- To return the decision-making process on Khudoni HPP project to legal framework;
- We call on the Prime Minister and the Energy Minister to refrain as much as possible from lobbying the investor's interests, exerting obvious pressure on competent decision-making authorities and project-affected communities and attempting to discredit environmental organizations;
- To study conflicts of interests and elite corruption mechanisms in order to rule out even a small opportunity of their existence.

1. Alternative for Development
2. Article 42 of the Constitution
3. Association for Civil Society Development of Georgia
4. Caucasian House
5. Friedrich Ebert Foundation
6. Georgian Center for Psychosocial and Medical Rehabilitation of Torture Victims
7. Georgian Young Lawyers' Association
8. Green Alternative

9. Guram Tikanadze Svaneti Youth Center
10. Human Rights Center
11. Human Rights Education and Monitoring Center (EMC)
12. Identoba
13. Imereti Region Scientific-Information Youth Association 'ASA'
14. Independent Journalists' House
15. International Center for Environmental Research
16. Kutaisi Information Center
17. Literacy Development Center
18. Meokhi – 2010
19. Rehabilitation Center for Victims of Torture "Empathy"
20. Stepantsminda
21. Svaneti Religious Society "Lagusheda"
22. Svaneti Tourism Center
23. Teachers' Union "Education and Universe"
24. Transparency International – Georgia
25. Union of Disabled Persons and IDPs